FILED
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ALEXANDER L. STEVAS,
CLERK

No. 81-1991

In The

Supreme Court of the United States

October Term, 1982

Morrison-Knudsen Construction Company,

and

Argonaut Insurance Company,
Petitioners,

v.

Director, Office of Workers' Compensation Programs, United States Department of Labor,

and

Sonia Hilyer, Widow of James H. Hilyer,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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JOINT APPENDIX

E. Barrett Prettyman, Jr.*
Walter A. Smith, Jr.
(a partnership including professional corporations)
Hogan & Hartson
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
(202) 331-4625

Arthur Larson
Duke University School of Law
Durham, North Carolina 27706
(919) 684-2384

Richard W. Galiher, Jr.
Galiher, Clarke, Martell & Donnelly
1215 - 19th Street, N.W.
Washington, D.C. 20036
(202) 331-3330
Counsel for Petitioners

Geo. S. Leonard
6207 Tally-ho Lane
Alexandria, Va. 22307
(703) 660-6699
Counsel for Respondent Hilyer

Rex E. Lee
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217
Counsel for the Federal Respondent

* Counsel of Record

Petition for Certiorari Filed April 13, 1982
Certiorari Granted October 4, 1982

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DOCKET ENTRIES FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1388

SONIA HILYER (Widow of James H. Hilyer),
Petitioner

v.

MORRISON-KNUDSEN CONSTRUCTION COMPANY
and ARGONAUT INSURANCE COMPANY,
Respondents

PETITION FOR REVIEW OF AN ORDER OF THE BENEFITS REVIEW BOARD

DATE	FILINGS—PROCEEDINGS
(B) 4- 9-80	4-Petitioner's petition for review of an order of the Benefits Review Board (m-8)
(B) 4- 9-80	Certified copy of petition for review was mailed to the BRB, Dept. of Labor & Richard W. Galiher, Esq.
(D) 4-25-80	Certified Index to Record (n-5)
(E) 5- 6-80	Clerk's order, sua sponte, that this case is consolidated with 80-1440
(T) 5-22-80	4-Petitioner's motion for permission to file deferred appendix, Rule 30(c) (m-21)
(C) 5-28-80	Clerk's order, sua sponte, consolidating Nos. 80-1388, 80-1440, 80-1504

DATE	FILINGS—PROCEEDINGS
(D) 6- 2-80	4-Motion of Directors, OWCP motion to establish a consolidated briefing schedule (m-29)
(E) 6- 4-80	Clerk's order granting the motion for leave to proceed under Rule 30(c)
(C) 6- 5-80	Clerk's order granting the motion to establish consolidated briefing schedule and the following schedule is set: June 30, 1980—Brief for petitioners Director, OWCP and Hilyer re average weekly wage determination July 30, 1980—Brief for respondents' Morrison-Knudsen and Argonaut in response, and for those parties as petitioners re attorneys' fee determination August 25, 1980—Reply brief, if any, for the Director and Hilyer, and for those parties in response re attorneys' fees Sept. 8, 1980—Reply brief (if any) re attorneys' fee
(C) 7- 7-80	4-Petitioner's (Sonia Hilyer) motion for leave to file brief, time having expired (m-7)
(C) 7- 7-80	7-Joint appendix (m-27)
(B) 07-14-80	Clerk's order granting the motion of petitioner's (Sonia Hilyer) for leave to file brief out of time, and the Clerk is directed to file lodged brief
(B) 07-14-80	15-Petitioner's (Sonia Hilyer) brief (m-7)
(T) 07-30-80	15-Brief of petitioners (Morrison-Knudsen Construction Co., et al) (m-30)
(T) 07-30-80	15-Brief of respondents (Morrison-Knudsen Construction Co., et al) (m-30)
(T) 07-30-80	10-Joint Appendix (II) (m-30)

DATE	FILINGS—PROCEEDINGS
(T) 08-27-80	15-Petitioner's (Hilyer) brief (m-25)
(T) 08-27-80	15-Petitioner's (Hilyer) reply brief (m-25)
(B) 03-13-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of these cases: Petitioner Director of the Office of Workers Compensation Programs—10 minutes; Respondents and cross petitioners —15 minutes; Cross respondent Hilyer (to argue the fee matter)—5 minutes. Argument should be heard in the above order.
(B) 03-19-81	Argued before Robinson and Robb*, CJ's; and Luther M. Swygert, CJ, USCA for the Seventh Circuit.
(S) 12-01-81	Opinion for the Court filed by Circuit Judge Swygert
(S) 12-01-81	Judgment that the order of the BRB is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with the opinion filed today
(V) 12-10-81	4-Petitioner's motion for allowance of appellate fee and appropriate stay of mandate (m-9)
(V) 12-14-81	1-Petitioner's bill of costs (m-11)
(V) 12-15-81	15-Respondents' petition for rehearing en banc and/or suggestion for rehearing en banc (m-15)
(V) 12-15-81	4-Respondents' opposition to petitioner's motion for allowance of appellate fee and bill of costs (m-15)
(V) 12-22-81	4-Petitioner's reply to respondents' opposition to petitioner's application for counsel fees (m-21)

DATE	FILINGS—PROCEEDINGS
(C) 12-30-81	4-Respondents' reply to petitioners' reply to respondents' opposition to petitioner's application for counsel fees (m-28) (OK, GF)
(B) 01-14-82	Per Curiam order that respondents/cross-petitioners' petition for rehearing is denied; CJ Robinson, Robb, CJ; and Luther M. Swygert, CJ, USCA for the Seventh Circuit
(B) 01-14-82	Per Curiam order, en banc, that respondents/cross-petitioners' suggestion for rehearing, en banc, is denied; CJ Robinson, Wright, Tamm, MacKinnon, Robb, Wilkey, Wald, Mikva, Edwards and Ginsburg, CJ's (CJ's MacKinnon, Wilkey and Ginsburg would granted rehearing, en banc)
(V) 01-18-82	4-Respondents' motion for stay of mandate pending of petition of certiorari to the Supreme Court of the United States (m-15)
(V) 01-25-82	4-Petitioner's opposition to motion for stay of mandate pending filing of petition for writ of certiorari (m-21)
(B) 02-23-82	Per Curiam order that the Clerk is directed to file respondents' lodged reply and enter same on the docket; and that respondents' motion for stay of mandate pending filing of petition of certiorari to the Supreme Court of the United States is granted for a period of thirty (30) days from the date of this order; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit
(B) 02-23-82	4-Respondents' reply to petitioner's opposition to motion to stay of mandate pending filing of petition for writ of certiorari (m-3)—filed per above order
(V) 03-16-82	4-Respondent's final motion to extend time for stay of mandate to 04/15/82 (m-12)

DATE	FILINGS—PROCEEDINGS
(V) 03-22-82	4-Petitioner's opposition to motion for additional stay of mandate (m-17)
(B) 03-26-82	Per Curiam order that the respondents' motion for further stay of the issuance of this Court's mandate is granted and the Clerk is directed not to issue the mandate in the cases prior to April 16, 1982; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit
(C) 04-16-82	Notice from Clerk, SC that petition for writ of certiorari was filed on April 13, 1982 in SC No. 81-1891

GENERAL DOCKET

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1440

MORRISON-KNUDSEN CONSTRUCTION COMPANY and ARGONAUT INSURANCE COMPANY,
Petitioners

v.

SONIA HILYER (Widow of James H. Hilyer),
Respondent

PETITION FOR REVIEW OF AN ORDER OF THE BENEFITS REVIEW BOARD

DATE	FILINGS—PROCEEDINGS
(B) 04-24-80	4-Petitioners' petition for review of an order of the Benefits Review Board (m-24)
(B) 04-28-80	Certified copy of petition for review was mailed to the Benefits Review Board, US Dept. of Labor & George S. Leonard
(E) 5-6-80	Clerk's order, sua sponte, that this case is consolidated with 80-1388
(T) 5-22-80	4-Petitioner's motion for permission to file deferred appendix, Rule 30(c) (m-21)
(C) 5-28-80	Clerk's order, sua sponte, consolidating Nos. 80-1388, 80-1440 & 80-1504
(D) 6-2-80	4-Motion of Directors, OWCP motion to establish a consolidated briefing schedule (m-29)
(E) 6-4-80	Clerk's order granting the motion for leave to proceed under Rule 30(c)
(C) 6-5-80	Clerk's order granting joint motion to establish consolidated briefing schedule and the following schedule is set:

DATE	FILINGS—PROCEEDINGS
	June 30, 1980—Brief for petitioners Director, OWCP and Hilyer re average weekly wage determination
	July 30, 1980—Brief for respondents' Morrison-Knudsen and Argonaut in response, and for those parties as petitioners re attorneys' fee determination
	August 25, 1980—Reply brief, if any for the Director and Hilyer, and for those parties in response re attorneys' fees
	Sept. 8, 1980—Reply brief (if any,) re attorneys' fee
(T) 6-13-80	Copy of Certified Index to Record (n-4)
(T) 07-30-80	15-Brief of petitioners (Morrison-Knudsen Construction Co., et al) (m-30)
(T) 07-30-80	15-Brief of respondents (Morrison-Knudsen Construction Co., et al) (m-30)
(T) 07-30-80	10-Joint Appendix (II) (m-30)
(T) 08-27-80	15-Brief of Sonia Hilyer (m-25)
(T) 08-27-80	15-Reply brief of Sonia Hilyer (m-25)
(B) 03-13-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of these cases: Petitioner Director of Office of Workers Compensation Programs—10 minutes; Respondents and cross petitioners—15 minutes; Cross respondent Hilyer (to argue the fee matter)—5 minutes. Argument should be heard in the above order.
(B) 03-19-81	Argued before Robinson and Robb*, CJ's; and Luther M. Swygert, CJ, USCA for the Seventh Circuit
(S) 12-01-81	Opinion for the Court filed by Circuit Judge Swygert

DATE	FILINGS—PROCEEDINGS
(S) 12-01-81	Judgment that the order of the BRB is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with the opinion filed today
(V) 12-10-81	4-Respondent's motion for allowance of appellate fee and appropriate stay of mandate (m-9)
(V) 12-14-81	1-Respondent's bill of costs (m-11)
(V) 12-15-81	15-Petitioners' petition for rehearing en banc and/or suggestion for rehearing en banc (m-15)
(V) 12-15-81	4-Petitioners' opposition to respondent's motion for allowance of appellate fee and bill of costs (m-15)
(V) 12-22-81	4-Respondent's reply to petitioners' opposition to respondent's application for counsel fees (m-21)
(C) 12-30-81	4-Petitioner's reply to respondent's reply to petitioners' opposition to respondent's application for counsel fees (m-28) (OK, GF)
(V) 01-18-82	4-Petitioners' motion for stay of mandate pending filing of petition of certiorari to the Supreme Court of the United States (m-15)
(V) 01-25-82	4-Respondent's opposition to motion for stay of mandate pending filing of petition for writ of certiorari (m-21)
(B) 02-23-82	Per Curiam order that the Clerk is directed to file respondents' lodged reply and enter same on the docket; and that respondents' motion for stay of mandate pending filing of petition of certiorari to the Supreme Court of the United States is granted for a period of thirty (30) days from the date of this order; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit.

DATE	FILINGS—PROCEEDINGS
(B) 02-23-82	4-Respondents' reply to petitioner's opposition to motion to stay of mandate pending filing of petition for writ of certiorari (m-3)—filed per above order
(V) 03-16-82	4-Petitioners' final motion to extend time for stay of mandate to 04/15/82 (m-12)
(V) 03-22-82	4-Respondent's opposition to motion for additional stay of mandate (m-17)
(B) 03-26-82	Per Curiam order that respondents' motion for further stay of the issuance of this Court's mandate is granted and the Clerk is directed not to issue the mandate in the cases prior to April 16, 1982; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit
(C) 04-16-82	Notice from Clerk, SC that petition for writ of certiorari was filed in SC No. 81-1891 on April 13, 1982

GENERAL DOCKET

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 80-1504

DIRECTOR, OFFICE OF WORKERS' COMPENSATION,
UNITED STATES DEPARTMENT OF LABOR,
Petitioner

v.

MORRISON-KNUDSEN CONSTRUCTION COMPANY
and ARGONAUT INSURANCE COMPANY,
Respondents

PETITION FOR REVIEW OF AN ORDER OF THE BENEFITS REVIEW BOARD

DATE	FILINGS—PROCEEDINGS
(B) 05-12-80	4-Petitioner's petition for review of an order of the Benefits Review Board (m-8)
(B) 05-13-80	Certified copy of petition for review was mailed to the BRB, Dept. of Labor, George S. Leonard & Richard W. Galiher
(C) 5-28-80	Clerk's order, sua sponte, consolidating Nos. 30-1388, 80-1440 & 80-1504
(D) 6-2-80	4-Petitioner's joint motion to establish a consolidated briefing schedule (m-29)
(E) 6-4-80	Clerk's order granting the motion to proceed under Rule 30(c)
(T) 6-13-80	Copy of Certified Index to Record (n-4)
(C) 7-7-80	7-Joint appendix (m-27)
(C) 7-7-80	15-Petitioner's (Director) brief (m-27)
(T) 07-30-80	15-Brief of petitioners (Morrison-Knudsen Construction Co., et al.) (m-30)
(T) 07-30-80	15-Brief of respondents (Morrison-Knudsen Construction Co., et al.) (m-30)

DATE	FILINGS—PROCEEDINGS
(T) 07-30-80	10-Joint Appendix (II) (m-30)
(T) 08-27-80	15-Brief of Sonia Hilyer (m-25)
(T) 08-27-80	15-Reply brief of Sonia Hilyer (m-25)
(B) 03-13-81	Clerk's order, sua sponte, that the following times are allotted for the oral argument of these cases: Petitioner Director of Office of Workers Compensation Programs—10 minutes; Respondents and cross petitioners—15 minutes; Cross respondent Hilyer (to argue the fee matter)—5 minutes. Argument should be heard in the above order.
(B) 03-19-81	Argued before Robinson and Robb *, CJ's; and Luther M. Swygert, CJ, USCA for the Seventh Circuit
(S) 12-01-81	Opinion for the Court filed by Circuit Judge Swygert
(S) 12-01-81	Judgment that the order of the BRB is affirmed in part, reversed in part, and the case is remanded for further proceedings consistent with the opinion filed today
(V) 12-15-81	15-Respondents' petition for rehearing en banc and/or suggestion for rehearing en banc (m-15)
(V) 01-18-82	4-Respondents' motion for stay of mandate pending filing of petition of certiorari to the Supreme Court of the United States (m-15)
(B) 02-23-82	Per Curiam order that the Clerk is directed to file respondents' lodged reply and enter same on the docket; and that respondents' motion for stay of mandate pending filing of petition of certiorari to the Supreme Court of the United States is granted for a period of thirty (30) days from the date of this order; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit

DATE	FILINGS—PROCEEDINGS
(B) 02-23-82	4-Respondents' reply to petitioner's opposition to motion to stay of mandate pending filing of petition for writ of certiorari (m-3)—filed per above order
(V) 03-16-82	4-Respondents' final motion to extend time for stay of mandate to 04/15/82 (m-12)
(B) 03-26-82	Per Curiam order that respondents' motion for further stay of the issuance of this Court's mandate is granted and the Clerk is directed not to issue the mandate in the cases prior to April 16, 1982; CJ Robinson; Robb, CJ; and Swygert, SCJ, USCA for the Seventh Circuit
(C) 04-16-82	Notice from Clerk, SC that petition for writ of certiorari was filed In SC No. 81-1891 on April 13, 1982

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Nos. 80-1388 and 80-1504

SONIA HILYER

and

DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS,
Petitioners-Cross-respondents

v.

MORRISON-KNUDSEN CONSTRUCTION COMPANY

and

ARGONAUT INSURANCE COMPANY,
Respondents-Cross-petitioners

ON PETITION FOR REVIEW OF AN ORDER OF
THE BENEFITS REVIEW BOARD

JOINT APPENDIX I

CA# 80-1388: SONIA HILYER, Petitioner v. MORRISON-KNUDSEN CONSTRUCTION COMPANY and ARGONAUT INSURANCE COMPANY, Respondents (Case No. 76-DCWC-158) (OWCP No. 40-82056) (BRB No. 78-568)

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UNITED STATES DEPARTMENT OF LABOR
OFFICE OF ADMINISTRATIVE LAW JUDGES

Case No. 76-DCWC-158
OWCP No. 40-82056

IN THE MATTER OF:

JAMES H. HILYER (Deceased),
Claimant

against

MORRISON-KNUDSEN CONSTRUCTION COMPANY,
Employer

Room 700
Vanguard Building
1111 - 20th Street, N.W.
Washington, D.C.

Thursday,
July 1, 1976

9:30 a.m.

BEFORE:

DAVID PELKEY
Administrative Law Judge

APPEARANCES:

On behalf of Claimant:

GEORGE STEPHEN LEONARD, ESQUIRE
Leonard, Glammer & Flues
1019 - 19th Street, N.W.
Washington, D.C. 20036

On behalf of Employer:

RICHARD W. GALIHER, ESQUIRE
1215 - 19th Street, N.W.
Washington, D.C. 20036

* * * *

[36] JUDGE PELKEY: If we are going to go off the record for the purposes of framing a stipulation on matters that can be admitted, while we are on the record I want to find out, for the purposes of this hearing, those stipulations, once entered into record will be considered binding on the parties, they will be considered as treating the matters with which they deal as not in issue, and stipulations will represent the items stipulated can be incorporated in formal findings of fact by me.

Making those stipulations of record will be considered eliminating the need to present evidence to establish those items or to support them.

A stipulation as to those items will be considered as conclusively establishing their validity as facts. I want you to understand how we are going to treat stipulations, once they are entered into and made of record. Is that acceptable?

MR. LEONARD: That is acceptable.

MR. GALIHER: Yes, Your Honor.

* * * *

[37] JUDGE PELKEY: * * *

Admission of these items as stipulation is to be governed by the statement I made before we went off the record. For the record at this point, the following items are stipulated as items to be admitted as facts.

One, on April 19, 1974, James H. Hilyer was regularly employed by Employer as a laborer, and performed assigned duties in the District of Columbia. On that same date, Employer, in the usual course of business carried on employment in the District.

On that same date, while performing assigned duties at the time and place designated for such performance, James H. Hilyer sustained an injury.

Two, as a result of the April 19, 1974 injury, James H. Hilyer expired on April 21, 1974.

Three, at the time of the death of James H. Hilyer, Sonia Hilyer was living with him as his wife.

Four, at the time of James H. Hilyer's death, he and Sonia Hilyer were parents of two minor sons; namely, James H. Hilyer, Jr., born November 30, 1966; and Bryan M. Hilyer, born May 7, 1970.

Five, as a result of James H. Hilyer's death, death benefits have been paid to the widow and the minor children [38] under the law, since April 20, 1974. That those payments have been based on an average weekly wage of $205.92 and they have totaled $137.28 per week paid.

Have I accurately stated the stipulation, gentlemen?

MR. LEONARD: Yes.

MR. GALIHER: Yes, Your Honor.

MR. LEONARD: With one possible exception, Your Honor. Are you stating the average weekly wage of $205.92 on which the payments were based, that that be indicated to be the Employer's calculation.

The point is, you are here to determine average weekly wage.

JUDGE PELKEY: Would you stipulate that as the Employer's calculation of average weekly wage?

MR. GALIHER: Pursuant to the Act, yes, Your Honor.

JUDGE PELKEY: It is stipulated that the $205.92 weekly wage amount represents Employer's computation thereof in its understanding of the requirements of the Act. Is that all right?

MR. GALIHER: Yes, Your Honor.

JUDGE PELKEY: There is one thing, as far as I see it, I indicated in the stipulation that these death benefits have been paid since April 20, 1974. I notice we say Mr. Hilyer died April 21.

[39] MR. LEONARD: Yes, Your Honor. Injury payments were due on the twentieth, which was a Saturday in any event, and he died the next day.

JUDGE PELKEY: Were death benefits paid from the twentieth?

MR. GALIHER: Yes, sir.

* * * *

[44] PAUL BUTTS

having been first duly sworn, was called as a witness herein, and was examined and testified as follows:

DIRECT EXAMINATION

BY MR. LEONARD:

Q Would you please state your name and home address for the record.

A My name is Paul Butts, 4427 Arnold Road, Suitland, Maryland, Apartment 104.

Q What is your employment, Mr. Butts?

A I am Business Agent with Local 456.

JUDGE PELKEY: What union?

THE WITNESS: Local 456, Laborer's Local 456.

JUDGE PELKEY: What is the union? What is the name of the union?

THE WITNESS: Highway and Heavy Construction.

MR. LEONARD: I ask at this time that Claimant's Exhibit 5, Mr. Butt's identification card, or what purports to be, be marked for identification only.

(Whereupon, the document referred to was marked as Claimant's Exhibit 5 for identification.)

BY MR. LEONARD:

Q Mr. Butts, I show you Claimant's Exhibit 5, and ask you to identify that?

A This is one of the cards representing who I am.

Q Does that correctly describe your employment?

A Yes, sir, it does.

[45] MR. LEONARD: I will offer Claimant's Exhibit 5 in evidence.

MR. GALIHER: No objection.

JUDGE PELKEY: Claimant's Exhibit 5 is admitted.

(Whereupon, the document referred to, having previously been marked as Claimant's Exhibit 5, was received in evidence.)

BY MR. LEONARD:

Q I show you, at this time, Claimant's Exhibit 4 and ask you if you can identify that?

A Yes, sir. This is what we refer to as a union card or a union book. Once a member has joined a local and is working on a job, after he has paid his initiation fee, he receives one of these.

Q Looking at that, what does it show as to the membership of James Hilyer in your union?

A For this card here, for the year 1974, he was a member in good standing with dues paid up through April.

Q How about 1973?

A Yes, sir, November and December. The last of 1973 and starting in January 1974.

Q I show you at this time Claimant's Exhibit 3 in evidence and ask you if you have seen one of those before?

A Yes, sir. This is the agreement that was in effect [46] at the time of Mr. Hilyer's death. It is a contract.

Q Was it in effect for the year prior to that?

A Yes, this was May 1, 1972 to April 30, 1975.

Q Did that apply to all employees of Morrison-Knudsen who were employees of the union?

A Yes, sir.

Q I show you at this time Claimant's Exhibits 1 and 2 and ask you if you have ever seen anything like that before?

A Yes, sir. I have seen these quite a few times from Morrison-Knudsen. They are pay stubs, they come with checks each week, totaling the number of hours, and supposed to total the hourly rate.

Q What information do they contain?

A It gives the total—

MR. GALIHER: Your Honor, I believe the document speaks for itself. It has been admitted into evidence. I don't think we have to reiterate it.

JUDGE PELKEY: I agree with you.

BY MR. LEONARD:

Q Are union dues paid on a fixed or hourly basis?

A If you are talking about regular dues, we have a $6.00 a month regular union dues.

Q As to the union dues which are shown on Claimant's Exhibits 1 and 2, are they the regular union dues or are they other types of dues and if so, what?

[47] A These are other type dues. They are like administrative dues for health and welfare, pension and so forth.

Q Are they based on a monthly basis or hourly basis?

A Hourly basis.

Q What is the amount of the dues?

A They are $4.00.

Q What is the amount per hour?

A I would have to refresh my memory on this because it goes back to a contract which is not now in effect, on the old contract.

Q I call your attention to Claimant's Exhibit 1, which say $4.00, Claimant's Exhibit 2 says $5.50 for 56 hours. Does that indicate a rate to you or does it refresh your recollection?

A Yes, sir. That would have been ten cents on the hour.

Q Does the union then keep the record of the amount of these dues paid by its various laboring members working for Morrison-Knudsen?

MR. GALIHER: To the union?

MR. LEONARD: To the union.

THE WITNESS: We have what we call per capita, each member is listed on that.

JUDGE PELKEY: What did you describe it as?

THE WITNESS: A per capita, each member is listed [48] on months and so forth.

BY MR. LEONARD:

Q Your record of dues paid to the union would show the number of hours that each man has worked?

A Yes, sir, that would be on it.

MR. LEONARD: I ask to have this marked as Claimant's Exhibit 6.

(Whereupon, the document was marked as Claimant's Exhibit 6 for identification.)

BY MR. LEONARD:

Q Mr. Butts, I show you Claimant's Exhibit 6 and ask you to identify it.

A Yes, sir, it is a Laborer's District Council Working Dues Fund. It gives the members name, social security number, hours reported for the month and so on.

Q For all employers or one particular employer?

A No, the District Council should have one of these for all companies.

Q Taking Claimant's Exhibit 6 as an example, is that for any specific employer?

A This here?

Q Yes.

A No, sir.

JUDGE PELKEY: You say that is not for any [49] particular employer?

THE WITNESS: It should be for all employers.

BY MR. LEONARD:

Q On page 1, what is the firm name given there?

A Morrison-Knudsen Company, Incorporated, 1725 Eye Street, N.W., Suite 610.

Q Would you say the names attached to it are for all employers or just Morrison-Knudsen?

A On here it is just Morrison-Knudsen. It should be just the laborers on here to my knowledge.

Q Each of those laborers is paid in accordance with Claimant's Exhibit 3, the wage agreement?

A Yes, sir.

MR. GALIHER: Objection, move to strike. I don't think he can testify what each of the employees is paid. He can testify what his records show, but the question that was asked, to which he answered is much too broad.

MR. LEONARD: Each of the persons—

JUDGE PELKEY: I thing the position is well taken. Do you want to clarify that?

MR. LEONARD: Surely.

BY MR. LEONARD:

Q With respect to each of the persons named on those lists of the employees of Morrison-Knudsen?

A Yes, sir.

[50] Q Are they members of the union?

A Yes, sir, and they are supposed to be.

Q Does the union supervise their payment by Morrison-Knudsen?

A Only if there is a mistake in the pay or they are underpaid or are not getting paid the right rate per hour.

Q How is that rate established?

A That is negotiated between the Contractor's Association and the unions when a new contract is drawn up.

Q Is that the contract referred to as Claimant's Exhibit 3?

A Yes, sir.

Q To what extent does the union supervise the payment of the amounts stated in Claimant's Exhibit 5 to these people?

A I can't explain exactly how this is all worked out. I am not on none of the council's or anything like that, the Trustee Boards that work all of these out. All of this is negotiated when the contracts are drawn up and I am not in on the meetings on the contracts.

Q Let me put it this way, the contract—Claimant's Exhibit 3 is the contract between the union and Morrison-Knudsen?

A Yes, sir.

Q Each of the persons on your list are persons who were, in fact, members of the Laborer's Union and were [51] working for Morrison-Knudsen?

A Yes, sir.

Q The lists you have in Claimant's Exhibit 6 show the number of hours worked each month by each of such employees?

A Yes, sir.

Q That is 1974, do you have these same records for 1973?

A They should be the same records, stating the same facts and everything like that.

Q Could they be produced to the Court if required?

A I don't see any reason why they couldn't.

JUDGE PELKEY: The answer is yes?

THE WITNESS: Yes.

BY MR. LEONARD:

Q Under the contract between Morrison-Knudsen and the union, Mr. Butts, does the union maintain trust funds for various purposes?

A Yes, sir.

Q Does Morrison-Knudsen pay into those trust funds under the agreement?

A Yes, sir.

Q Are the amounts of those payments set out in the agreement?

A Yes, sir.

Q Are those for the benefit of the employees or [52] benefit of the union?

MR. GALIHER: Objection. The contract, which is in evidence, speaks for itself. If he wants to testify what his understanding is from a union standpoint, he can do it. But, again, I believe the contract does speak for itself.

JUDGE PELKEY: The question is—
MR. LEONARD: I will withdraw the question.

BY MR. LEONARD:

Q Does the union, in fact, pay pensions to their employees under the Pension Plan?
A Yes, sir.
Q Does it pay health and welfare benefits to the employees?
A Yes, sir.
Q Are the charges made to the employer, to the best of your knowledge, charges based upon the hours they worked?
A Would you repeat that again?
Q Are the charges made to the employer—In other words, that the employer pays to the union—are they based on the number of hours your members worked?
A Yes, sir.
Q Are there three such funds in the union; one for pension, one for health and welfare and one for training?
A Yes, sir.
Q The amounts paid by the employer, in each case, are [53] as designated by the contract?
A Yes, sir.
Q The benefits of those flow to the employees or members of your union?
A Yes, sir.
MR. GALIHER: Objection. I am not sure he can say benefits flow to the members of the union.

Judge John O'Malley has previously ruled, on March 9, 1976, in the case of Collins versus Todd Shipyard Corporation and Traveler's Insurance Company, BRP Service 17 ALJ, I believe it is number 4, that employer's contribution to a health and welfare fund and a pension fund are not properly includable in computations of the average weekly wage.

They are not includable, they are not payments to the employee and the employee has vested right in those funds

only if he becomes ill or injured on the job or is eligible for a retirement pension. I believe that is specifically what the contract says.

JUDGE PELKEY: You are objecting to the question?

MR. GALIHER: I am just objecting to the question and the answer. The document speaks for itself.

JUDGE PELKEY: The objection is sustained.

MR. GALIHER: Could I move to strike the answer so the record may be complete?

[54] JUDGE PELKEY: You may move, I will deny it.

MR. LEONARD: I open at this time Claimant's Exhibit 7, the Union Pension Plan.

(Whereupon, the document referred to was marked Claimant's Exhibit 7 for identification.)

MR. GALIHER: I object. There has been no foundation laid for this documents use.

JUDGE PELKEY: He hasn't tendered it yet.

BY MR. LEONARD:

Q I show you Claimant's Exhibit 7, and ask you if you recognize that?

A This is the Laborer's Pension Plan. It covers various things for accidents and what is covered, different types.

Q Who is covered by it?

A Laborers.

Q When you mean laborers, you mean members of your union?

A Yes.

Q That includes the Claimant in this case?

A Yes, sir.

Q How is the Pension Plan funded?

A It is Trust Fund 3. There are trustees on the funds to administer.

[55] Q Where does the money come from?

A The money for these funds, the benefits, so much on the hour is paid into the funds and administered down.

Q By whom?

A The companies on the employees.

MR. LEONARD: I offer the Union Pension Plan at this time.

MR. GALIHER: I will let it in.

JUDGE PELKEY: I beg your pardon?

MR. GALIHER: No objection.

JUDGE PELKEY: Claimant's Exhibit 7 is admitted.

(Whereupon, the document referred to, having previously been marked as Claimant's Exhibit 7, was received in evidence.)

JUDGE PELKEY: I think he is still on Direct Examination of the witness.

MR. GALIHER: I want to withdraw my previous remark and put my objection of record. The reason is to be consistent with my position. I refer again to the Court decision I cited to the Court. I am just not sure pension plans are relevant to the determination of average weekly wage.

JUDGE PELKEY: By not objecting to the admission of the Exhibit, you are not agreeing, as a matter of law, that the benefits therein are mentioned in that Exhibit, constitute [56] evidence of an average weekly wage.

MR. GALIHER: I want to make sure that is understood for the record.

JUDGE PELKEY: The record so reflects.

BY MR. LEONARD:

Q Mr. Butts, of your personal knowledge, were you employed by the union between April 19, 1973 and April, 1974?

A I was trying to think exactly the time I started. That should have been just about the time or maybe a

little bit after. I have been a member for several years; I am referring as a Business Agent.

Q Were there laborers who worked from April 1973 to April 1974 or more?

A Yes, sir.

MR. LEONARD: That is all I have. Thank you very much, Mr. Butts.

CROSS EXAMINATION

BY MR. GALIHER:

Q You have indicated, referring to Exhibit 6 that is in front of you, that this is apparently a computer print-out of the names of laborers and monthly periods showing the names of the laborers that were working for Morrison-Knudsen during that month, and what hours they worked and the amount of money, the ten cents, is what? This is paid by the employer under this contract to the union for what fund was it?

[57] A Your trust fund number 3—The Health and Welfare Pension would be trust fund number 3.

Q Is this the only payment the union receives from Morrison-Knudsen for these laborers?

A I would have to go back in the contract to refresh on that.

Q Of your own personal knowledge, is this the only payment you know of that the union receives from Morrison-Knudsen?

MR. LEONARD: I object as irrelevant. The contract speaks for itself.

JUDGE PELKEY: Overruled.

BY MR. GALIHER:

Q Is it?

A You have several things in there paid by the employer in the contract.

JUDGE PELKEY: Is your answer you don't know?

THE WITNESS: This is not the only—

JUDGE PELKEY: Your answer is that is not the only payment?

THE WITNESS: No, sir.

BY MR. GALIHER:

Q Who drafted this contract?

A That is drawn up between the Contractor's Association and the members of our Local Laborer's International.

[58] Q The Contract Association of which Morrison-Knudsen is a signatory to that agreement, is that right?

A Yes, sir, that is right.

Q Who is the author of this? I notice you are the organizer and founder of the union, do you know who is the author of this book? Who wrote the contracts for the union?

A I am organizer and Business Agent, not the founder.

Q Do you know who wrote this book?

A That particular book there, no, sir.

Q Do you know how it came into being or anything like that?

A I wasn't at any of the meetings, no, sir.

Q You have indicated a man who is a member of the Laborer's Union—he has to be a member of the Laborer's Union in order to work for Morrison-Knudsen on this project?

A He is supposed to be, yes.

JUDGE PELKEY: You say this project, I don't know what you are talking about.

MR. GALIHER: The subway project. This was where Mr. Hilyer was working at the time.

THE WITNESS: If he was a laborer he was supposed to be a member of Local 456 to work on the job, yes.

BY MR. GALIHER:

Q When he is hired by Morrison-Knudsen, how is that handled? Is he sent out from the union hall?

[59] A He can be sent out from a union hall if the company calls in for men or the company has a request, and using a letter he can bring it to the hall, to the agent covering the job and get a clearance in that way.

Q Do you know anything personally about Mr. Hilyer?

A No, sir.

Q Does the employee himself contribute anything to any of those funds?

A You mean straight out of his pocket?

Q Yes.

A Like reach back and take it out?

Q Yes.

A No, sir. Except his monthly dues, $6.00, which he pays himself. That is the only thing.

Q But they don't go into those funds? The dues don't go into those funds, the dues are separate?

A Yes, this is to keep him a member in good standing.

Q So the dues are to have the card, to be a union employee and to work on a union job?

A Yes, sir.

Q Apart from that, out of the employer's pocket the employer pays the funds you have mentioned to the Health and Welfare Funds, right?

A Yes, it is right in the back of the contract there.

Q At the time an employee pays his union dues, as I [60] understand it, all he gets for his $6.00 is to be a member of the union and to work on a union job? I want to clarify that.

A By being a member, he works on a union job, true. If he is not a member on a union job, he can't work on it, if he is a laborer and what we are talking about now. But along with his $6.00 a month he has representation, if, by any reason, he is laid off or fired for an unjust cause—

Q He has grievance procedures which are within the contract?

A Yes.

Q Beyond that this employee doesn't have any right, does he, to tell your union how to administer those funds?

A Just a regular laborer would not be telling the Local how to administer the funds, no, sir.

Q In this instance, a regular laborer does not have any control really, of how funds paid into these different pension plans and so forth are used?

A He might not, unless he has read a copy of the contract. Then he would know how it was to be paid in, what was supposed to be paid by hour and so forth.

Q Practically speaking, he doesn't have any right to tell the union what to do with that money, right?

A If something is brought up in one of the union meetings or something like this, one of the members can make a suggestion on something of this matter.

[61] Q Does the employee—Do the payments in that fund go directly from the employer, that would be Morrison-Knudsen, to the union?

A They go to the funds. They are paid into the funds, they are not paid to us.

Q They are never paid to the employee, are they?

A To the employee?

Q That is right.

A No, sir.

* * * *

REDIRECT EXAMINATION

BY MR. LEONARD:

Q Who are the beneficiaries of the funds?

MR. GALIHER: Objection.

JUDGE PELKEY: Do you know?

THE WITNESS: I could not give you all of the names, no, sir.

BY MR. LEONARD:

Q Who is the beneficiary of the pension plan, Claimant's Exhibit 7?

A Pete Ellis, Leroy Adams—

Q Who are the beneficiaries who get the benefits?

A The wives. I misunderstood, I am sorry.

Q What about injured employees, do they get them?

A Injured employees, they still get them.

[62] Q Your pension fund is for members of the union?

A Members and his dependents.

Q Same thing for Health and Welfare?

A Yes, sir.

Q Same thing for Training Fund?

A That would be basically for the member himself on Training.

Q It is still for the member?

A For the member, yes.

Q So, what the employer pays to the union for each of these funds, is a payment for the benefit of the employee?

MR. GALIHER: Objection.

JUDGE PELKEY: Do you know?

THE WITNESS: I said, yes, sir.

MR. GALIHER: Move to strike.

JUDGE PELKEY: Overruled.

* * * *

Plf Ex No. 1 7/1/76 E.J.

MORRISON - KNUDSEN COMPANY, INC.

DETACH AND RETAIN

THIS IS A STATEMENT OF YOUR EARNINGS AND DEDUCTIONS AS REPORTED TO FEDERAL AND STATE GOVERNMENTS

PR 541/73

J. HILYER						158-34-3706	016608	021274
25880		25880	3446	1514	1		1208	19712
64700	400			25880		VIRGINIA TAX		808
						UNION-DUES		400

[redacted]

BASIC HOURLY RATE	STRAIGHT TIME		NET	GROSS EARNINGS	STATE EARNINGS	OTHER DEDUCTIONS	AMOUNT

PLAINTIFF'S EXHIBIT NO. 1

PLAINTIFF'S EXHIBIT NO. 3

WAGE AGREEMENT

Laborers' District Council of
Washington, D.C.
and Vicinity

Affiliated with

Laborers' International Union
of North America, AFL-CIO

[EMBLEM]

Subway and Rapid Transit
Agreement

May 1, 1972 to April 30, 1975

Local Union 456
3712 12th Street, N.E.
Washington, D.C.
Phone: 635-8508-9

[Union Label]

WORKING AGREEMENT

FOREWORD

This Agreement is entered into May 1, 1972, by and between the Construction Contractors Council, Inc., 1515 Wilson Boulevard, Arlington, Virginia, Suite 804 acting on behalf of its members and the members of the Master Builders' Association and individual employers signatory to this Agreement, herein referred to as parties of the first part or Employers, and the Laborers' District Council of Washington, D.C., and Vicinity, acting on behalf of Local Unions affiliated with this District Council, herein referred to as the party of the second part or Union, for the purpose of establishing harmonious relations and facilitating peaceful adjustment of wage schedules and working conditions and for preventing strikes and lockouts and establishing a peaceful method for adjustment of grievances and disputes which may from time to time arise between the contracting parties.

The work covered by this Agreement shall be all of the work under the jurisdiction of the Laborers' International Union of North America, AFL-CIO, contracted by the Washington Metropolitan Area Transit Authority or its successor organization, within the territory covered by the Laborers' District Council of Washington, D.C., and Vicinity.

WITNESSETH: Principles upon which this Agreement is based: All parties hereto adopt the following Articles as the basis for their joint working rules and operation of the Joint Arbitration Board as hereinafter provided for.

• • • •

Health and Welfare

Section 5. The parties hereto agree to continue to operate the Health and Welfare Fund known as Laborers' District Council Trust Fund No. 3 for the benefit of the

employees covered by this collective bargaining agreement. The Employers agree to pay to such fund an amount equal to twenty-eight cents ($.28) per hour from May 1, 1972 to April 30, 1975, for all hours worked by employees who are covered by this Agreement in accordance with the terms of the Health and Welfare Trust Agreement in effect between the parties. Such payments shall be calculated on all hours worked by employees subsequent to May 1, 1972. Any changes in benefits resulting from such increased payments into such Fund shall be determined by the Board of Trustees. Failure to make payments to the Fund shall be in violation of this Agreement.

Each party will delegate four (4) trustees to administer the Fund. The trustees shall use the payments to the Fund for the benefit of the Subway and Rapid Transit Laborers, their families and dependents, for medical, dental, and/or hospital care, compensation for injuries, and/or illness resulting from occupational activity, or for unemployment benefits, or for the purchase of insurance covering life and accidental death, accident disability benefits, hospitalization, surgical, medical and sickness benefits. All of these benefits above outlined or any other type of health and welfare benefits may, in the discretion of the trustees, be paid directly from the Fund either from principal or income, or both, to the Subway and Rapid Transit Laborers, their families and dependents.

Notwithstanding the termination date of this collective bargaining agreement, it is understood by all parties to this Agreement that the above-mentioned health and welfare provisions will remain in full force and effect up to and including April 30, 1975, as per agreement.

Pension

Section 6. Parties hereto agree to continue to operate the Pension and Disability (a disability and pension) Fund known as Laborers' District Council Trust Fund

No. 3 Pension and Disability established January 1, 1959, for the benefit of the employees covered by this collective bargaining agreement. The employers shall pay such fund twenty-five cents ($.25) per hour for all hours worked by employees from May 1, 1972 through April 30, 1973, and thirty-five cents ($.35) per hour for all hours worked by employees from May 1, 1973 through April 30, 1974, and forty cents ($.40) per hour for all hours worked by employees on and after May 1, 1974.

Such payments shall be calculated on all hours worked by employees subsequent to May 1, 1972. Any changes in benefits resulting from such increased payments into such Fund shall be determined by the trustees. Failure to make payments to the Fund shall be a violation of this Agreement.

Each party will delegate four (4) trustees to administer the Fund. The trustees shall use the payments to the Fund for Subway and Rapid Transit Laborers, and their families and shall cover all disability and pension benefits as may in the discretion of the trustees be agreed upon and incorporated in an appropriate trust agreement or agreements and Pension and Disability Plan.

Section 7. It is further agreed that the Union shall have the right to declare this Agreement terminated as to any Employer who fails to make payments into the health and welfare fund or into the pension fund, or in any manner fails to abide by the terms of the Trust Agreement governing Laborers' District Council Health and Welfare Trust Fund No. 3 or the terms of the Trust Agreement governing Laborers' District Council Pension and Disability Trust Fund No. 3, upon giving such Employer forty-eight (48) hours' written notice to that effect. A copy of such notice shall also be served on the Construction Contractors Council.

Section 8. Parties to this Agreement hereby agree that all sub-contractors employed by them on any job shall

secure a bond in the form required by the respective Boards of Trustees of the Health and Welfare and the Pension and Disability Funds or shall provide a cash deposit in the amount which is satisfactory to the respective Boards of Trustees of such funds. In the event that a sub-contractor fails to secure said bond or to make said deposit, then the employers agree that they shall be responsible for the full and prompt payment by said subcontractors to the said Welfare and Pension Funds as required under this Agreement.

Section 9. The parties hereto agree to establish and operate a Training Fund for the purpose of insuring adequate trained manpower to perform the work covered by this collective bargaining agreement. The employers agree to pay to such fund commencing May 1, 1972, an amount equal to five cents ($0.05) per hour for all hours worked by employees on and after May 1, 1972, in accordance with the terms of the Training Fund Trust Agreement to be executed by the parties hereto prior to November 1, 1969.

• • • •

CONSTRUCTION CONTRACTORS COUNCIL, INC.

1515 Wilson Boulevard
Suite 804
Arlington, Va. 22209

MEMBERSHIP LIST

Amber Drilling Co.
American Construction Co., Inc.
Anning-Johnson Co., Inc.
Anchor Associates, Inc.
Atlas Machine & Iron Works
Gordon H. Ball, Inc.
Ball-Shea-Norair Joint Venture
J. W. Bateson Co., Inc.
Bell-Air Compressor Rental Co.
Frank Briscoe Company, Inc.
M. J. Byorick, Inc.
The Ceco Corporation
M. Cladny Construction Co., Inc.
Coe Construction, Inc.
Commercial Carpentry Corporation
Corning Construction, Inc.
Crane Rental Company, Inc.
Crane Service Company, Inc.
Edward M. Crough, Inc.
Dravo Corporation
Fred Drew Company, Inc.
Franki Foundation Company
Edward B. Friel, Inc.
George A. Fuller Company
Gilles & Cotting, Inc.
John C. Grimberg Co., Inc.
John H. Hampshire, Inc.
The Head Construction Company
Healy-Kruse Joint Venture
Hutchison Brothers Excavating Co., Inc.
The George Hyman Construction Co.

Anthony J. Izzo, Jr. Company
A. F. Jorss Iron Works
John B. Kelly, Inc.
Peter Kiewit Sons' Company
The Law Company
Kirk Lindsey, Inc.
Kirk Lindsey Construction Co., Inc.
William P. Lipscomb Co., Inc.
N. Litterio & Company, Inc.
Mark Masonry Co., Inc.
George C. Martin, Inc.
The Maritime Company
Massman-Kiewit-Early Joint Venture
Morauer & Hartzell, Inc.
Morrison-Knudsen Company, Inc.
Moses-Ecco Company, Inc.
McDermott Associates, Inc.
McKinney Drilling Company
McLeod & Romborg Stone Co., Inc.
Norair Engineering Corp.
Olsen Woodwork Co., Inc.
Arnold Parreco & Haass, Inc.
Palisades Construction Corp.
Pick Masonry Company
Potomac Iron Works, Inc.
Potts & Callahan, Inc.
Prospect Industries, Inc.
Raymond International, Inc.
Charles H. Riddle Company
Rivers & Bryan, Inc.
C. J. Roberts Reinforcing Steel Co.
Schnable Foundation Company
J. F. Shea Co., Inc.
Skinker & Garrett, Inc.
Slattery Associates, Inc.
Spencer, White & Prentis, Inc.
Star Carpentry Corporation
Steele & Moroney, Inc.

Stromberg Sheet Metal Works, Inc.
R. M. Thornton, Inc.
S. M. Traylor Brothers, Joint Venture
Heron Todd Steel Construction Co.
Chas. H. Tompkins Company
Walter Truland Corporation
Turner Construction Company
Underground Construction Co., Inc.
Underwater Advisors Engineering Corp.
Utley-James, Inc.
The Volpe Construction Co., Inc.
Washington Air Compressor Rental Co.
Williams Enterprises

PLAINTIFF'S EXHIBIT NO. 7

[I 'cture Omitted in Printing]

March 1972

Trust Fund No. 3 Plan
Amendment Effective January 1, 1973

Article V—Amount of Benefits

The multiplier of years of Current Credited Service is changed from $12 to $15. The maximum monthly benefit is $400. (See page 20)

Same changes on page 6 of question and answer section.

[Picture Omitted in Printing]

Laborers' District Council Pension and
Disability Trust Funds

TRUST FUND CONSULTANTS, INC.
821 - 15th Street, N.W.
Room 428
Washington, D.C. 20005

Phone 347-1841

ADMINISTRATORS
CONSULTANTS
ACTUARIES
EMPLOYEE BENEFIT PLANS

Fourth Revision

Includes All Amendments
To July 1, 1971

DEAR BROTHERS:

Not too many years ago, and surely within the lifetime of nearly all of our members, the idea that someday Laborers would receive pension checks to help support them in their later years would have been dismissed as unrealistic. Yet today this dream has become a reality and the true and great worth of your Union has again been demonstrated.

The Plan and the benefits which it prescribes are the product of many days of meetings and discussions in which your Officers and Representatives participated in full measure and with a single-minded purpose, namely, to secure for the membership the greatest benefits for the greatest number under a financially sound plan. We are satisfied that we have done just that.

Your Officers of the Laborers' District Council and your Representatives on the Board of Trustees of the Pension Funds look with pride upon the Plan set forth in this pamphlet. Within the limits of the financial resources available as a result of collective bargaining, the Plan represents the best it is possible to devise. Indeed, on the basis of available information concerning other Laborers' pension plans throughout the country, this Plan provides greater benefits than any other based on the same or comparable employer contributions.

We are not so satisfied or complacent, however, as to think that it can never be improved. This Plan, like other programs in which the Union is vitally interested, must be constantly re-examined in the light of changing conditions in the economy and developments in the construction industry.

It is our sincere wish that our brethren who have retired under the Plan may long continue to receive pension checks earned for their many years of devoted serv-

ice to their Union and to the construction industry in the Washington metropolitan area.

Fraternally yours,

LABORERS' DISTRICT COUNCIL OF WASHINGTON, D.C., AND VICINITY

Francis L. Greenfield,
President

Robert L. Glenn,
Secretary-Treasurer

TO ALL EMPLOYEES
COVERED BY THE FUNDS:

This booklet has been prepared on behalf of the Boards of Trustees to tell you about the Pension Plan and what it means to you. It contains a complete text of the Plan (starting on page 11) and answers to most of the questions which might arise.

The Pension and Disability Trust Funds are governed by Boards of Trustees, composed of equal numbers of Union and Management representatives. The money collected by the Funds is contributed by your employer as provided in his Agreement with the Union. It can be used only for benefits as shown in the Plan and for necessary administrative expenses. Once a year, the Trustees will submit a financial statement to the United States Government, covering all income, benefits and expenditures.

We urge you to study this booklet carefully so you will be fully aware of the benefits to which you may be entitled. A report showing the credits you have earned will be available each year on or about July 1 at the Fund Office. You should come in and pick it up so you can check your record. If you think it is not correct, bring your payroll slips to the Fund Office where your claim can be investigated. You must do this before October 1 each year.

We are pleased that it has been possible to increase the benefits and provide you with this additional security for your retirement.

YOUR BOARDS OF TRUSTEES

January 1972

QUESTIONS AND ANSWERS

WHO IS COVERED?

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The plans cover all laborers who work for contributing employers within the jurisdiction of the Laborers' District Council of Washington, D.C. who make payments to a Fund. Of course, each laborer must have worked to earn enough credits to make him eligible.

HOW DO I EARN CREDITS?

There are two kinds of credit—Past Service Credit and Current Credited Service.

PAST SERVICE CREDITS were given to those who worked under the health and welfare trust funds during the five year period before the pension plans began. The past service period for the No. 2 Plan is 1954 through 1958; the No. 3 Plan 1952 through 1956; the Plumbers Laborers Plan 1953 through 1958. Each 400 hours reported and paid for to the health and welfare funds equals ¼ credit. Your total credits in these five years multiplied by 4 equals your Past Service Credit. The maximum Past Service Credit allowed is twenty (20).

CURRENT CREDITED SERVICE is working credit and is based on actual hours worked as reported and paid for to a Pension Fund each calendar year. Each 200 hours so reported equals ⅛ credit, but the maximum a man can earn in one year is 1 credit.

WHAT HAPPENS IF I CHANGE FROM ONE KIND OF LABORERS' WORK TO ANOTHER?

All the credits you earn under any of the Laborers' Funds within the jurisdiction of the Laborers' District Council of Washington, D.C. and Vicinity will count towards your pension. They will be added together.

WHAT HAPPENS TO MY CREDITS IF I STOP WORKING FOR A CONTRIBUTING EMPLOYER?

If you work less than 200 hours a year for contributing employers for an extended period, you can lose your credits. You will lose your credit if you have:

less than 2 credits and have 1 year with under 200 hours;

2 to 5 credits and have 2 years with under 200 hours;

5 to 10 credits and have 3 years with under 200 hours;

10 to 20 credits and have 4 years with under 200 hours.

If you do not work and earn credits for 4 years, you will lose all your previous credits,

EXCEPT:

When you have accumulated 10 credits of Current Credited Service—working credits—you cannot lose them even if you do no more work under the plan, provided you are 40 years old or more, but you will have to wait until you retire (after age 55 years) to get your pension.

WHAT IS VESTING?

Vesting means that you cannot lose your credits. When you have accumulated 10 credits of Current Credited Services—10 working credits—your rights in this plan will be vested, provided you are at least 40 years old.

HOW CAN I TELL IF I AM ELIGIBLE FOR A PENSION?

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1. You must be at least 55 years old, and you must show proof of birth.
2. You must have Current Credited Service (Working credit) as follows:

To retire at age	Current Credited Service
55	17 or more
56	16
57	15
58	14
59	13
60	12
61	11
62 or over	10

HOW CAN I TELL WHAT MY MONTHLY PENSION WILL BE?

The amount of your pension will depend on the fund or funds in which you have earned your credit.

Fund No. 2:

(1) Multiply Past Service Credit by $5.00

(2) Multiply Current Credited Service by $8.00.

The sum of (1) and (2) is your monthly pension.

The minimum monthly pension is $45; the maximum is $228.

Fund No. 3:

(1) Multiply Past Service Credit by $6.00

(2) Multiply Current Credited Service by $15.00

The sum of (1) and (2) is your monthly pension.

The minimum monthly pension is $45; the maximum is $400.

Plumbers' Laborers:

Your total credit is multiplied by $5.00.

There are options which pay benefits to your beneficiary after your death. See page 7 for details.

IS MY MONTHLY PENSION AFFECTED BY MY SOCIAL SECURITY PENSION?

No. Your monthly pension is in addition to your Social Security Pension.

HOW DO I APPLY FOR A PENSION?

1. Contact the Fund Office at least a month before you plan to retire.
2. Bring with you a document establishing your age—such as birth certificate, baptismal certificate, census record, medicare card.
3. If you have already received a letter from the Social Security administration advising you that you are entitled to Social Security benefits, bring it with you.
4. If you are still working and approaching age 72, get in touch with the Fund Office at least a month before your 72nd birthday.

PROVING YOUR AGE

If you don't have a birth certificate among your papers, we suggest that you try to obtain one promptly and put it away for safekeeping. This will avoid delay when you file for Social Security benefits and your pension.

Other documents which can be used to establish age are baptismal certificates, census reports, old family Bibles and school records.

MAY MY WIFE RECEIVE ANY PENSION BENEFITS?

Yes. Once you have qualified for a pension, there are three options from which you may choose to take care of her. You may select any of the three following plans INSTEAD of your regular pension, but you must do this in writing at least one year prior to your date of retirement.

1. Seventy percent of your regular pension payable to you for life. After your death, your wife would receive the same benefit for the remainder of her life. (This will be 1% lower for each year your wife is younger than you, or 1% higher for each year she is older, up to a maximum of 15%).

2. Eighty-five percent of your regular pension payable to you for life. After your death, your wife would receive half that amount for the remainder of her life. (This will be 1% lower for each year your wife is younger than you, or 1% higher for each year she is older, up to a maximum of 10%.)

3. Ninety percent of your regular pension, paid to you for the rest of your life. Should you die before 10 years, a beneficiary designated by you would continue to receive the pension for the rest of the 10-year period. (This will be 1½% lower for each year or part of a year you retire after your 62nd birthday.)

Inquire at the Fund Office regarding these benefits in your particular case.

MAY ANYONE OTHER THAN MY WIFE RECEIVE ANY OF MY PENSION BENEFITS?

Yes. Under either Option 1 or 2 above, you may substitute a dependent sister or brother of approximately equal age. In Option 3, you may name anyone you wish as your beneficiary.

MAY I WORK AND EARN ADDITIONAL CREDIT AFTER BEGINNING TO RECEIVE MY PENSION?

After beginning to receive your pension benefit you may work at the calling in the industry on jobs of Employers who have working agreements with the Laborers' District Council only so long as such earnings do not exceed the Social Security maximum for retired persons who continue to receive their full Social Security benefits. If your earnings from such work at calling in the industry exceed such Social Security maximum, your pension benefit will stop immediately. However, these hours will not constitute additional credit nor an increase in your pension benefit.

WHAT HAPPENS IF I DIE BEFORE I QUALIFY FOR A PENSION?

Your beneficiary is entitled to receive a lump sum death benefit in the amount of $1,000 if you are a participating employee in the Plan at the time of death and have accrued at least one (1) year of Current Credited Service under the Plan.

WHAT HAPPENS IF I DIE AFTER I QUALIFY FOR A PENSION BUT BEFORE I BEGIN TO RECEIVE ONE?

If, at the time of your death, you were 55 or older, eligible for a pension, but had not retired, your beneficiary would be entitled to a lump sum death benefit in the amount of $1,000 and an additional benefit equal in amount to the sum of 36 months of your retirement benefits.

WHAT HAPPENS IF I DIE A SHORT TIME AFTER I BEGIN TO RECEIVE MY PENSION?

If you die less than three years after beginning to receive your pension, your beneficiary would receive a lump sum death benefit in the amount of $1,000 and an additional

benefit equal in amount to the sum of 36 months of your retirement benefit less the sum already paid in retirement benefits.

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WHAT HAPPENS IF I BECOME DISABLED BEFORE I REACH RETIREMENT AGE?

If you are totally and permanently disabled, and have ten (10) years of Current Credited Service, you will be eligible for a disability benefit.

WHAT IS MEANT BY TOTAL AND PERMANENT DISABILITY?

Total and permanent disability means that you can never again work for pay or profit.

DOES IT MAKE ANY DIFFERENCE HOW I BECOME DISABLED?

Yes. You will not qualify if your disability is due to any of the following:

1. Engaging in a criminal activity.
2. Habitual drunkenness or the use of narcotics.
3. Self-inflicted injury.

HOW CAN I TELL WHAT MY DISABILITY PENSION WILL BE?

If a man qualifies for disability benefits, he computes his disability pension in the same manner as he would his regular pension.

WHAT HAPPENS TO MY CREDITS WHILE I AM IN MILITARY SERVICE?

Immediately upon entering service, you should notify the Fund in writing of the date of your induction. If you do this, any credits you have will be held for you.

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IF I MOVE OR OTHERWISE LEAVE THE PLAN WILL I RECEIVE MY BENEFITS?

No. If you leave the Plan before you qualify for retirement, or before your rights have vested, you will receive no benefits or payment.

[Picture Omitted in Printing]

HOW DO I FIND OUT HOW MANY CREDITS I HAVE?

Each year a report will be prepared showing your total credits to date. This report will be available at the Fund office on or about July 1 of each year. You should come in and get it or it will be mailed to you on request.

WHAT CAN I DO IF I THINK I HAVE NOT BEEN GIVEN ALL THE CREDIT I EARNED?

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If you think your record is not correct, come to the Fund Office before October 1. Bring with you information to help us check your claim. It is very important that you keep all your income tax forms and payroll slips for at least two years. If you do not question your record of credits before October 1, the records will be considered correct as shown on the report.

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CAN THE BENEFITS BE CHANGED?

Yes. The Board of Trustees has the authority to change the benefits.

MAY I ASSIGN MY RIGHTS UNDER THIS PLAN?

No assignment or transfer of payments is permitted.

These questions and answers cover, in a general manner, the most important provisions of the Plan. Nothing in this explanation is intended to in any way change the full details of the Plan. Further information may be secured by inquiring at the Fund Office. The full text of the Pension and Disability Plan No. 2 follows.

Plan No. 3 and the Plumbers' Laborers' Plans differ only with respect to the effective dates, the dates the plans started paying pensions, the date on which Past Service Credit is based, and the value of each credit in computing pensions. These differences are shown at the end of the Plan.

LABORERS' DISTRICT COUNCIL
PENSION AND DISABILITY
TRUST FUND NO. 2

PENSION AND DISABILITY PLAN

ARTICLE I.—Definitions

The meaning of all words and phrases used in this Plan shall be that defined in, or derived from the context of, the Trust Agreement, unless a different meaning is clearly indicated by the context herein.

Section 1—Plan, or Pension and Disability Plan

The terms "Plan" or "Pension and Disability Plan" means the Laborers District Council Pension and Disability Trust Fund No. 2, Pension and Disability Plan, embodied herein, as defined in Article I, Section 5, of the Trust Agreement.

Sec. 2—Union

The term "Union" means the Laborers District Council of Washington, D.C., and Vicinity.

Sec. 3—Employer

The term "Employer" means the Construction Contractors Council of Washington, D.C.

Sec. 4—Individual Employer

The term "individual employer" means any employer, as defined in Article I, Section 2, of the Trust Agreement, who is required by a collective bargaining agreement as defined in Article I, Section 1, the Trust Agreement, to make payment to the Fund, as defined in Article I, Section 4, of the Trust Agreement.

Sec. 5—Employee

The term "employee" means any employee as defined in Article I, Section 3, of the Trust Agreement.

Sec. 6—Agreement or Trust Agreement

The terms "Agreement" or "Trust Agreement" mean the Agreement and Declaration of Trust establishing the Laborers' District Council Pension and Disability Trust Fund No. 2, and as revised, amended or modified.

Sec. 7—Fund or Trust Fund

The terms "Fund" or "Trust Fund" mean the Fund or Trust Fund as defined in Article I, Section 4, of the Trust Agreement.

Sec. 8—Trustees or Board or Board of Trustees

The terms "Trustees" or "Board" or "Board of Trustees" mean the Trustees as defined in Article I, Section 9, of the Trust Agreement.

Sec. 9—Effective Date

The effective date of the Plan shall mean January 1, 1959.

Sec. 10—Anniversary Date

The anniversary date of the Plan shall mean January 1 of each year during the operation of the Plan.

ARTICLE II--Administration

Section 1—Board of Trustees

The Board of Trustees shall have the powers and shall perform the functions set forth in the Trust Agreement.

Sec. 2—Delegation of Authority

This Plan shall be administered by the Administrator selected by the Board of Trustees. The Board of Trustees, by resolution, may delegate to the Administrator such powers and duties as may be necessary or desirable in order to relieve the Board of Trustees of the details of supervision and management.

ARTICLE III—Determination of Service

Section 1—Credited Service

Credited Service shall consist of the total of Past Credited Service and Current Credited Service computed as of December 31 of each calendar year. Past Credited Service shall be limited to the calendar years of 1954 through 1958 multiplied by 4 and shall consist of employment in the industry as reported, prior to January 1, 1960, to the Laborers' District Council Trust Fund No. 2, or such other Laborers' Trust Fund or Funds as may be specified, participating in the Plan, in units of one-quarter (1/4) year and multiples thereof, for each such calendar year. Current Credited Service shall consist of employment in the industry during each calendar year beginning January 1, 1959, as reported to the Laborers' District Council Pension and Disability Trust Fund No. 2, or such other Laborers' Trust Fund or Funds as may be specified, and for which payments have been made into the Fund, in units of one-quarter (1/4) year and multiples thereof for the period between January 1, 1959, and December 31, 1969, and in units of one-eighth (1/8) year and multiples thereof for the period subsequent to January 1, 1970. Current Credited Service may be earned by or be credited to an employee after his normal retirement date or disability date provided, however, that actual retirement shall be considered to have occurred no later than as of the seventy-second (72nd) birthday. Current Credited Service shall be determined in accordance with the following schedule:

(a) Between January 1, 1959 and December 31, 1969

Reported Employment or Service During a Calendar Year	Current Credited Service
1,600 or more hours	1 year
1,200 to 1,600 hours	¾ year
800 to 1,200 hours	½ year
400 to 800 hours	¼ year
Less than 400 hours	None

(b) Subsequent to January 1, 1970

Reported Employment or Service During a Calendar Year	Current Credited Service
1,600 or more hours	1 year
1,400 to 1,600 hours	⅞ year
1,200 to 1,400 hours	¾ year
1,000 to 1,200 hours	⅝ year
800 to 1,000 hours	½ year
600 to 800 hours	⅜ year
400 to 600 hours	¼ year
200 to 400 hours	⅛ year
Less than 200 hours	None

Sec. 2—Termination of Participation

Participation by an employee in this Plan and all Credited Service previously accumulated shall be terminated if the employee has not qualified for Vested Benefits, has not become a pensioner and has earned no Credited Service for a period in accordance with the following table:

Credited Service Previously Accumulated	Period During Which No Service Credit Earned
Less than 2 years service credit	1 calendar year
2 to 5 years service credit	2 calendar years
5 to 10 years service credit	3 calendar years
10 to 20 years service credit	4 calendar years

Time of service in the Armed Forces of the United States shall be excluded from the period during which no service credit was earned.

Since employees may be covered by more than one pension and disability plan negotiated on their behalf by the Laborers' District Council of Washington, D.C., and Vicinity, for the purpose only of determining termination of participation in this Plan the total of Credited Service in all such plans shall be used in the foregoing table as Credited Service previously accumulated.

Sec. 3—Vesting

An employee is eligible for Deferred Vested Retirement benefits commencing on his normal retirement date if he terminates his participation after having attained age forty (40) and completed at least ten (10) years of Current Credited Service. (The Normal Retirement Benefit commencement date is determined from the table in Article IV, Section 1, and depends on the number of years of accrued Current Credited Service.) Any employee who has accumulated a total of ten (10) years or more of Current Credited Service in two or more pension and disability plans negotiated by the Laborers' District Council of Washington, D.C., and Vicinity and shall have reached age forty (40) shall not have his Credited Service in either or any of such Plans terminated under any conditions or circumstances whatsoever, prior to his normal retirement date. When such employee has attained his normal retirement date and the employee has filed an application for retirement benefits which shall be no later than as of his seventy-second (72nd) birthday, he shall

receive from each Plan in which he has accumulated Credited Service that pension to which he may be entitled based on the total Credited Service in each such Plan. Vested rights shall not be terminated under any conditions or circumstances whatsoever except as set forth under Section 2 of Article VII herein.

ARTICLE IV—Qualifications for Pensions

Section 1—Conditions for Age Retirement Benefit

An employee is eligible for Normal Retirement Benefits on the first of the month following satisfaction of the following age and Current Credited Service conditions:

Age	Years of Current Credited Service
55	17 or more
56	16
57	15
58	14
59	13
60	12
61	11
62 or over	10

Sec. 2—Conditions for Total and Permanent Disability

On or after January 1, 1970, an employee is eligible for Total and Permanent Disability Retirement benefits, commencing on the date of disability determination, if he should become totally and permanently disabled through some unavoidable cause after having completed at least ten (10) years of Current Credited Service. Such employee shall be deemed to be totally and permanently disabled if he has been totally and permanently disabled by bodily injury or disease so as to be prevented thereby

from engaging in any occupation or employment for remuneration or profit and, in the opinion of a qualified physician, such total disability will be permanent and continuous for the remainder of his life. Such disability shall be deemed to have resulted from an unavoidable cause, unless it (1) was contracted, suffered, or incurred while such person was engaged in, or resulted from his having engaged in, a criminal enterprise, or (2) resulted from his habitual drunkenness or the use of narcotics, or (3) resulted from self-inflicted injury.

Sec. 3—Application for Benefits

Each application for benefits under the Plan shall be made in writing on a form provided by the Board of Trustees and shall be filed no later than within three (3) years of his seventy-second (72nd) birthday which is the latest actual retirement date available to him. If the application is not so made within this three-year period, the participant shall be ineligible for benefits, and his rights under the Plan shall be forfeited unless the Trustees unanimously agree that the participant was unable to file the application through no fault of his own and then filed the application without undue delay. The Board of Trustees may require any applicant for benefits or any person receiving benefits under the Plan to furnish to it such information as in its discretion it shall require.

ARTICLE V—Amount of Benefits

Section 1—Age Retirement Benefit and Total and Permanent Disability Benefit

The monthly amount of age retirement benefit granted an employee eligible for such benefit under the provisions of Article IV, Section 1, or of total and permanent disability benefit granted an employee eligible for such under the provision of Article IV, Section 2, shall be equal to the product of four and 50/100 dollars ($4.50) and the number of years of past credited service plus the product

of eight dollars ($8.00) and the number of years of current credited service of such employee at his normal age retirement date, disability date or actual retirement date but no later than as of his seventy-second (72nd) birthday, as the case may be from a minimum of forty-five ($45.00) up to a maximum of two hundred twenty-eight dollars ($228.00) per month. Effective January 1, 1972, the monthly benefit for an eligible employee will be increased from four dollars and fifty cents ($4.50) multiplied by the number of years of past credited service to five dollars ($5.00) multiplied by the number of years of past credited service plus the product of eight dollars ($8.00) and the number of years of current credited service. Benefits shall commence the first (1st) day of the next calendar month after the filing of proper application and after all conditions of the applicable sections shall have been met, and shall continue for three years certain and life thereafter.

Sec. 2—Period of Payment of Age Retirement Benefit and Total and Permanent Disability Benefit

Subject to the other provisions of this Plan, the payment of an age retirement benefit or of a total and permanent disability benefit shall commence as of the first (1st) day of the next calendar month after the completed application for benefits has been filed and after all conditions of the applicable sections shall have been satisfied, and shall be paid on the first (1st) day of each and every calendar month thereafter for life.

There shall be paid on behalf of an employee who, at the time of his death, was eligible for an age retirement benefit under Article IV, Section 1, but who had not filed for such age retirement benefit, a lump sum death benefit of $1,000 and an additional benefit equal in amount to the sum of thirty-six months of such retirement benefit for which he was eligible, provided, however, that if he had filed for such age retirement benefit but had not received

thirty-six months of such retirement benefit, there shall be paid a death benefit equal in amount to the sum of thirty-six months of such age retirement benefit less the sum of any such age retirement benefits paid. If there is no beneficiary designated by the eligible member or surviving the death of the eligible member to receive such death benefit, payment will be made to the first surviving class of the following classes of successive preference beneficiaries: (a) widow or widower, (b) surviving children, (c) surviving parents, (d) surviving brothers and sisters, (e) executors or administrators.

With respect to a totally disabled employee receiving a total and permanent disability benefit, the Board of Trustees reserves the right to request or to obtain evidence satisfactory to it that such employee continues to be totally disabled. If such evidence is not provided to the Board of Trustees or cannot be obtained by it, the Board of Trustees may assume that such employee is no longer totally disabled and he shall no longer be eligible for a total and permanent disability benefit under this Plan. If an employee who had received a total and permanent disability benefit under this Plan should no longer be eligible for such benefit for any reason, the period during which he did not work as a result of such disability shall not be counted in the period of service for the computation of an age retirement benefit or any subsequent total and permanent disability benefit.

Sec. 3—Joint and Survivorship Benefit

An employee who expects to qualify for an age retirement benefit under Article IV, Section 1, may elect, in writing on an approved form filed with the Trustees at least one year prior to his normal retirement date, to receive, in lieu of benefits for three years certain and life thereafter only, Option (A), a joint and survivorship benefit payable monthly so long as he and his designated joint annuitant shall live, or, Option (B) a joint and

survivorship benefit payable monthly so long as he shall live and thereafter, in one-half (½) that monthly amount, so long as his designated joint annuitant shall live.

The joint and survivorship benefit under Option (A) shall be seventy percent (70%) of the monthly age retirement benefit for the employee eligible for such benefit and for his designated joint annuitant of equal age. The percentage shall be decreased by one percent (1%) for each year, or part thereof, by which the designated joint annuitant is younger than the employee eligible for such benefit, and shall be increased by one percent (1%) for each year, or part thereof, (not to exceed fifteen percent (15%)), by which the designated joint annuitant is older than the employee eligible for such benefit.

The joint and survivorship benefit under Option (B) shall be eighty-five percent (85%) of the monthly age retirement benefit for the employee eligible for such benefit, so long as he shall live, and thereafter shall be one-half (½) that monthly joint and survivorship benefit for his designated joint annuitant of equal age. The percentage shall be decreased by one percent (1%) for each year or part thereof, by which the designated joint annuitant is younger than the employee eligible for such benefit, and shall be increased by one percent (1%) for each year, or part thereof, (not to exceed ten percent (10%)), by which the designated joint annuitant is older than the employee eligible for such benefit.

The option shall be null and void if the designated joint annuitant dies prior to the employee's filing of a completed application for benefits under Article IV, Section 3. Additionally, if the employee elects an option but dies prior to filing a completed application for benefits under Article IV, Section 3, the designated joint annuitant shall receive no joint and survivorship benefit.

Sec. 4—Ten Year Certain Benefit

An employee who expects to qualify for a Normal Retirement benefit may elect, at least one year prior to his normal retirement date, to receive in lieu of benefits for three years certain and life thereafter only, a ten year certain benefit payable so long as he shall live but for not less than ten years. The monthly benefit payable for ten years certain and life thereafter shall be 90% of the three year certain and lifetime only benefit, but this percentage shall be decreased by 1½% for each year, or part thereof, by which the employee retires after his 62nd birthday. If the employee elects the option but dies prior to filing a completed application, the option shall be null and void.

In the event that the employee shall die after he qualifies for an age retirement benefit under Article IV, Section 1, but prior to the filing of a completed application for benefits under Article IV, Section 3, the employee's election of the ten year certain benefit shall become inoperative.

Sec. 5—Death Benefit

The beneficiary of any pensioner or deferred vested pensioner or of any participating employee who at the time of his death has at least one (1) year of Current Credited Service, shall be paid a Lump Sum Death Benefit in the amount of One Thousand Dollars ($1,000.00).

If there is no beneficiary designated by the eligible member or surviving the death of the eligible member to receive such death benefit, payment will be made to the first surviving class of the following classes of successive preference beneficiaries: (a) widow or widower, (b) surviving children, (c) surviving parents, (d) surviving brothers and sisters, (e) executors or administrators.

ARTICLE VI—Contribution to Trust Fund

Section 1—Individual Employer's Payments

Each individual employer shall pay to the Trustees for deposit in the Trust Fund, pursuant to the provisions of the Trust Agreement, such amounts with respect to its employees and under such conditions as provided in the collective bargaining agreements. Full and prompt payment by an individual employer of such amounts to the Trustees shall constitute a complete discharge of the individual employer's financial obligations under the Plan.

Sec. 2—Trust Fund

The Trust Fund created by the Trust Agreement and implemented by the individual employer's payments and the investment return thereon shall be held by the Trustees and administered in accordance with the provisions of the Trust Agreement. Neither the Trustees, Employer, nor the individual employers, either as a Committee or as individuals, in any manner guarantee the Trust Fund from loss or depreciation. All payments of benefits, as provided in the Plan, shall be made solely out of the Trust Fund and neither the Trustees, Employer, nor the individual employers, either as a Committee or as individuals, shall be in any manner liable therefor.

ARTICLE VII—Amendment-Termination

Section 1—Amendment

The provisions of the Plan may be amended or modified at any time, and from time to time, by mutual agreement of the Employer and the Union, but no such action shall contravene the terms of any collective bargaining agreement then in effect nor shall operate to permit any part of the assets of the Trust Fund to be used, or diverted, to purposes other than for the exclusive benefit of the employees or retired employees, or their dependents. Any modifications, alterations, or amendments required by

the Internal Revenue Code for the purposes of approval of the Plan under Section 4.01(a) of the Internal Revenue Code may be made retroactive and shall be accomplished by the Parties—the Employer and the Union.

Sec. 2—Termination

In the event of any final termination of the Plan, service shall not accrue thereafter on behalf of any employees, and after the payment of all reasonable expenses, taxes or proper charges, the funds then in trust shall be allocated by the Trustees for the benefit of each employee in the following manner, and in the following order, to the extent of the sufficiency of such funds, basing such allocations on such rates and tables as recommended, by the Administrator and approved by the Trustees:

a. An amount shall be allocated with respect to each employee retired for age or total disability equal to the actuarial reserve for his accrued benefits;

b. An amount shall be allocated with respect to each employee whose rights shall have vested under the provisions of Section 3 of Article III herein equal to the actuarial reserve for his accrued benefits;

c. An amount shall be allocated with respect to each remaining employee who shall have at least five (5) years of credited service, the amount so allocated to be equal to the actuarial reserve for his accrued benefits at the date of termination of the Plan.

d. If the funds to be allocated are sufficient to accommodate some but not all of the requirements of one of these categories (having accommodated all of the categories preceding), the remaining funds shall be divided pro-rata among all of the participants in the category for which funds are insufficient.

The allocations referred to above, when determined by the Administrator and the trustees, shall be applied for the benefit of each such employee ei-

ther by a cash payment, by the purchase of an annuity or retirement annuity contract from one or more insurance companies, or may be implemented through the continuance of the then existing Trust or through a new trust or trusts for that purpose, or by a combination of these media, as the Trustees shall determine.

e. After satisfaction of the liabilities of a, b and c above, any remaining monies shall be used to increase the termination benefits, determined above, in a proportionate manner.

ARTICLE VIII—Appeals Procedure

Section 1—Appeals

Any employee, any applicant for benefits or any person receiving benefits under this Plan adversely affected by any action or ruling by the Board of Trustees shall not be deemed to have exhausted his administrative remedies until he submits to the Board of Trustees an appeal containing a full statement of each and every reason urged for reversal or modification of such action or ruling and the Board of Trustees acts thereon.

Plan No. 2 started paying pensions on January 1, 1964.

Laborers' District Council Pension and Disability Trust Fund No. 3

The Laborers' District Council Pension and Disability Trust Fund No. 3 is identical to the preceding Plan except for the following:

1. Article I, Section 3—Effective Date

   The effective date of Plan No. 3 shall mean May 1, 1957.

2. Article III, Section 1—Credited Service

Past Credited Service for Plan No. 3 shall be limited to the calendar years 1952 through 1956.

Current Credited Service shall consist of employment in the Industry during each calendar year beginning May 1, 1957 as reported to the Laborers' District Council Pension and Disability Trust Fund No. 3, or such other Laborers' Trust Fund or Funds as may be specified, and for which payments have been made into the Fund, in units of one-quarter (¼) year and multiples thereof for the period between May 1, 1957 and December 31, 1969 and in units of one-eighth (⅛) year and multiples thereof for the period subsequent to January 1, 1970.

3. Article V—Amount of Benefits

The monthly retirement benefit shall be Six Dollars ($6.00) multiplied by the employee's years of Past Service Credit plus ($15.00) multiplied by the employee's years of Current Credited Service.

Plan No. 3 started paying pensions on January 1, 1962.

Plumbers' Laborers' Pension and
Disability Trust Fund Plan

The Plumbers' Laborers' Pension and Disability Trust Fund Plan is identical to the preceding Plan No. 2 as outlined except for the following:

1. Article I, Section 3—Effective Date

The effective date of the Plumbers' Laborers' Plan shall mean January 1, 1958.

2. Article III, Section 1—Credited Service

Past Credited Service for the Plumbers' Laborers' Plan shall be limited to the calendar years from 1953 through 1957.

Current Credited Service shall consist of employment in the industry during each calendar year beginning January 1, 1958 as reported to the Plumbers' Laborers' Pension and Disability Trust Fund or such other Laborers' Trust Fund or Funds as may be specified and for which payments have been made into the Fund, in units of one-quarter (1/4) year and multiples thereof for the period between January 1, 1958 and December 31, 1969 and in units of one-eighth (1/8) year and multiples thereof for the period subsequent to January 1, 1970.

3. Article V—Amount of Benefits

The monthly retirement benefit shall be Five Dollars ($5.00) multiplied by the employee's years of Credited Service.

The Plumbers' Laborers' Plan started paying pensions on January 1, 1963.

Your Union obtained this Program for You.

Be a Good Union Member!